

MANDATE

UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

At a Stated Term of the United States Court of Appeals for the Second Circuit, held at the Thurgood Marshall United States Courthouse, 40 Foley Square, in the City of New York, on the 11th day of July, two thousand and nineteen.

Bozzuto's Inc.,

Docket Nos. 18-125 (L), 18-331(XAP)

Petitioner-Cross-Respondent,

v.

National Labor Relations Board,

Respondent-Cross-Petitioner.

AMENDED JUDGMENT ENFORCING IN PART AN ORDER OF THE NATIONAL LABOR RELATIONS BOARD

Before: KEARSE, LIVINGSTON, and CARNEY, Circuit Judges.

THIS CAUSE came to be heard upon a petition filed by Bozzuto's, Inc. for review of an Order of the National Labor Relations Board issued December 12, 2017, in Board Case Nos. 01-CA-115298 and 01-CA-120801, reported at 365 NLRB No. 146 (2017), and upon a cross-petition filed by the National Labor Relations Board for enforcement of said Order. The Court heard argument of the parties and has considered the briefs and transcript of record filed in this cause. On June 24, 2019, the Court, being fully advised in the premises, handed down its opinion granting in part the petition of Bozzuto's, Inc. and granting in part the Board's cross-petition for enforcement. In conformity therewith, it is hereby

ORDERED AND ADJUDGED by the United States Court of Appeals for the Second Circuit that Bozzuto's, Inc., its officers, agents, successors, and assigns, shall abide by said order as modified by the Court. (See attached Order and Appendix).

For the Court:

Catherine O'Hagan Wolfe,
Clerk of Court

A True Copy

Catherine O'Hagan Wolfe, Clerk

United States Court of Appeals, Second Circuit

 

 

MANDATE ISSUED ON 09/03/2019

NATIONAL LABOR RELATIONS BOARD

v.

BOZZUTO'S INC.

ORDER

Bozzuto's Inc., Cheshire, Connecticut, its officers, agents, successors, and assigns, shall

1. Cease and desist from

- (a) Discharging, suspending, or discipline employees because they engage in protected concerted activities.
- (b) Announcing or granting wage increases in order to dissuade employees from supporting the Union.
- (c) Maintaining a policy of conditioning continued employment on an agreement by employees to refrain from talking about any discipline that they have received or from talking about their terms and conditions of employment.
- (d) In any like or related manner interfering with, restraining or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

- (a) Rescind the rule conditioning continued employment on an agreement by employees to refrain from talking about any discipline that they have received or from talking about their terms and conditions of employment and notify the employees in writing that this has been done and that the rule is no longer in force.
- (b) Make Todd McCarty whole for any loss of earnings and other benefits suffered as a result of the discrimination against him, in the manner set forth in the remedy section of the judge's decision as amended in the Board's Decision and Order reported at 365 NLRB No. 146.
- (c) Compensate Todd McCarty for the adverse tax consequences, if any, of receiving lump-sum backpay awards, and file with the Regional Director for Region 1, within 21 days of the date the amount of backpay is fixed, either by agreement or Board order, a report allocating the backpay awards to the appropriate calendar years for him.
- (d) Compensate Todd McCarty for his search-for-work and interim employment expenses regardless of whether those expenses exceed interim earnings.
- (e) Within 14 days from the date of this Order, remove from its files any reference to the unlawful actions against Todd McCarty, and within 3 days thereafter, notify him in writing that this has been done and that the unlawful actions will not be used against him in any way.
- (f) Preserve and, within 14 days of a request, or such additional time as the Regional Director may allow for good cause shown, provide at a reasonable place designated by the Board or its agents, all payroll records, social security payment records, timecards, personnel records and reports, and all other records, including an electronic copy of such

- records if stored in electronic form, necessary to analyze the amount of backpay due under the terms of this Order.
- (g) Within 14 days after service by the Region, post at its Cheshire, Connecticut facility, copies of the attached notices marked "Appendix." Copies of the notice, on forms provided by the Regional Director for Region 1, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places, including all places where notices to employees are customarily posted. In addition to physical posting of paper notices, notices shall be distributed electronically, such as by email, posting on an intranet or an internet site, and/or other electronic means, if the Respondent customarily communicates with its employees by such means. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. If the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since October 1, 2013.
 - (h) Within 21 days after service by the Region, file with the Regional Director for Region 1 a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

APPENDIX
NOTICE TO EMPLOYEES

POSTED PURSUANT TO A JUDGMENT OF THE UNITED STATES
COURT OF APPEALS ENFORCING AN ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union

Choose representatives to bargain with us on your behalf

Act together with other employees for your benefit and protection

Choose not to engage in any of these protected activities.

WE WILL NOT discharge, suspend, or discipline any of you for engaging in protected concerted activities.

WE WILL NOT announce or grant wage increases to dissuade you from supporting United Food and Commercial Workers Union, Local 919 or any other labor organization.

WE WILL NOT maintain a policy of conditioning continued employment on an agreement by you to refrain from talking about any disciplines you may have received or from talking about your terms and conditions of employment.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights listed above.

WE WILL make Todd McCarty whole for any loss of earnings and other benefits resulting from the discrimination against him, less any net interim earnings, plus interest.

WE WILL compensate Todd McCarty for the adverse tax consequences, if any, of receiving lump sum backpay awards, and WE WILL file with the Regional Director for Region 1, within 21 days of the date the amount of backpay is fixed, either by agreement or Board order, a report allocating the backpay award to the appropriate calendar years.

WE WILL compensate Todd McCarty for his search-for-work and interim employment expenses regardless of whether those expenses exceed interim earnings.

WE WILL, within 14 days from the date of the Board's Order, remove from our files any reference to the unlawful actions against Todd McCarty and WE WILL within 3 days thereafter, notify in writing that this has been done and that the discipline will not be used against him in any way.

BOZZUTO'S INC.